



## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Office of the Assistant Secretary for Administration**

#### **Privacy Act of 1974; System of Records**

**AGENCY:** Office of the Assistant Secretary for Administration, Department of Health and Human Services (HHS).

**ACTION:** Notice of a New System of Records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, the U.S. Department of Health and Human Services (HHS) is establishing a new departmentwide system of records, 09-90-2103, Accommodation Records About HHS Civilian Employees, Contractors and Visitors.

**DATES:** The new system of records is applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], subject to a 30-day period in which to comment on the routine uses.

**ADDRESSES:** The public should address written comments by email to [beth.kramer@hhs.gov](mailto:beth.kramer@hhs.gov) or by mail to Beth Kramer, HHS Privacy Act Officer, FOIA/Privacy Act Division – Suite 729H, Office of the Assistant Secretary for Public Affairs, 200 Independence Ave. SW, Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** General questions may be submitted to Beth Kramer, HHS Privacy Act Officer, by email or telephone at [beth.kramer@hhs.gov](mailto:beth.kramer@hhs.gov) or (202) 690-6941, or by mail addressed to: Beth Kramer, HHS Privacy Act Officer, FOIA/Privacy Act Division – Suite 729H, Office of the Assistant Secretary for Public Affairs, 200 Independence Ave. SW, Washington, DC 20201.

**SUPPLEMENTARY INFORMATION:**

This new system of records will cover all records used by HHS to process and determine requests for accommodation made verbally or in writing by HHS civilian employees, HHS contractors, and HHS visitors (visitors are defined in the Categories of Individuals section of the system of records notice). Accommodation records about federal civilian job applicants are covered by the government-wide system of records notice (SORN) published by the Office of Personnel Management, OPM/GOVT-5, Recruiting, Examining, and Placement Records, and accommodation records about HHS Public Health Service Commissioned Corps officers and applicants are covered by HHS SORN 09-40-0003 Public Health Service (PHS) Commissioned Corps Board Proceedings, so are not included in this new system of records.

All types of accommodation requests made by HHS civilian employees and HHS contractors and visitors are intended to be covered, including:

- Requests for accommodations based on a medical condition under the Rehabilitation Act of 1973 (Rehab Act), the Americans with Disabilities Act of 1990 (ADA), and the American with Disabilities Act Amendments Act of 2008 (ADAA); and
- Requests for religious accommodation under the First Amendment of the Constitution of the United States of America (First Amendment), Religious Freedom Restoration Act of 1993 (RFRA), or Title VII of the Civil Rights Act of 1964 (Title VII).

The records are used by relevant HHS supervisors, reasonable accommodation coordinators, equal employment opportunity (EEO) specialists, employee relations specialists, attorneys, medical review personnel, contracting officers and their representatives, and other personnel involved in processing or adjudicating accommodation requests.

A reasonable accommodation may be requested by and granted to a qualified individual with a disability in order to allow an employee to perform the essential functions of their position or to enjoy the same benefits and privileges of employment as other similarly situated employees. A

reasonable accommodation may also be requested by and granted to an individual with a disability to allow for participation in a federally funded program. A religious accommodation may be requested by and granted to an individual to resolve a conflict between a sincerely held religious belief, practice, or observance and a work requirement or requirement for participation in a federally funded program. An accommodation may include a modification or adjustment to a work requirement, the work environment, or the way things are customarily done by HHS.

HHS determines accommodation requests in accordance with applicable laws, regulations (for example, Equal Employment Opportunity Commission (EEOC) regulations), Department policies and guidance (for example, HHS' Personal Assistant Services (PAS) Accommodation guidance), and any specific guidelines of the relevant Operating Division or Staff Division (for example, the Administration for Children and Families Office of Diversity Management and EEO Reasonable Accommodation Procedures for Individuals with Disabilities (May 17, 2019)).

To control and limit access, use, and disclosure of the records appropriately, HHS may maintain disability-based accommodation records in or with other confidential medical files about the same individual, or otherwise separately from other types of records about the same individual, to the extent possible. Likewise, to the extent possible, HHS maintains religious accommodation records about an individual separately from other types of records about the individual.

Disability information is subject to (for example) restrictions stated in 42 U.S.C. 12112(d)(3)(B) and 29 C.F.R. § 1630.14(d)(4)(i); and information about how an individual exercises rights guaranteed by the First Amendment (which would include information describing sincerely held religious beliefs, practices, or observances) is subject to the restriction stated in 5 U.S.C. 552a(e)(7).

Prior to the date of publication, HHS relied on an Office of Personnel Management (OPM) governmentwide system of records, OPM/GOVT-10 Employee Medical File System Records, as covering disability-based accommodation records about civilian personnel. In recently reviewing

the Department's systems of records HHS determined that a new system of records is necessary and appropriate for all accommodation records (whether based on a disability or a sincerely held religious belief) about HHS civilian employees and HHS contractors and visitors. Accordingly, those accommodation records will now be covered by new system of records 09-90-2103.

HHS provided advance notice of the new system of records to the Office of Management and Budget and Congress as required by 5 U.S.C. 552a(r) and OMB Circular A-108, Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act, 81 FR 94424 (Dec. 23, 2016).

Cheryl Campbell,

Assistant Secretary for Administration.

**SYSTEM NAME AND NUMBER:**

Accommodation Records About HHS Civilian Employees, Contractors and Visitors, 09-90-2103.

**SECURITY CLASSIFICATION:**

Unclassified.

## SYSTEM LOCATION:

Accommodation records are collected and managed at the HHS Operating Division level and by the Office of Equal Employment Opportunity, Diversity and Inclusion (EEODI) at the Departmental level. The addresses of the HHS components responsible for this system of records are as follows:

- For the Department: Office of Equal Employment Opportunity, Diversity & Inclusion (EEODI), 300 C Street SW, Suite 2500, Washington, DC 20201.
- For the Public Health Service (PHS) Commissioned Corps: Office of the Assistant Secretary for Health (OASH), 200 Independence Ave. SW, Washington, DC 20201.
- For the Office of the Secretary (OS) (excluding the PHS Commissioned Corps); the Administration for Community Living (ACL); and the Substance Abuse and Mental Health Services Administration (SAMHSA): Equal Employment Opportunity Service Center (EEOSC), Mary E. Switzer Bldg. – Suite 2500, 300 C Street SW, Washington DC 20201.
- For the Administration for Children and Families: Office of Diversity Management and Equal Employment Opportunity (ODME), 330 C Street SW, Suite 3018, Washington, DC 20201.
- For the Centers for Disease Control and Prevention (CDC): Office of Equal Employment Opportunity, MS US11-1EEO, Centers for Disease Control and Prevention, 1600 Clifton Rd. NE, Atlanta, GA 30329-4027.
- For the Centers for Medicare & Medicaid Services (CMS): Office of Equal Opportunity and Civil Rights, 7500 Security Blvd., Baltimore, MD 21244.
- For the Food and Drug Administration (FDA): ): *Medical accommodation records*: Office of Enterprise Management Service, 8455 Colesville Rd, Silver Spring, MD 20910; *Religious belief accommodation records*: Office of Equal Employment

Opportunity, 10903 New Hampshire Avenue, WO32-2260, Silver Spring, MD 20903-0002.

- For the Health Resources and Services Administration (HRSA): Diversity and Inclusion (OCRDI), 5600 Fishers Ln., Room 14N176, Rockville, MD 20857.
- For the Indian Health Service (IHS): Diversity Management and Equal Employment Opportunity Staff (DMEEEO), 5600 Fishers Ln., Mail Stop 08E61, Rockville, MD 20857.
- For the National Institutes of Health (NIH): Access and Equity (A&E) Branch, Division of Guidance, Education and Marketing (GEM), Bldg. 2, Rm. 3W07, 2 Center Dr., Bethesda, MD 20892.

#### **SYSTEM MANAGER(S):**

The System Managers to whom individuals may submit Privacy Act requests regarding records about them in this system of records are as follows:

- For the Public Health Service (PHS) Commissioned Corps: Assistant Secretary for Health, Office of the Assistant Secretary for Health (OASH), 200 Independence Ave. SW, Washington, DC 20201, wayne.hall@hhs.gov.
- For the Office of the Secretary (OS) (excluding the PHS Commissioned Corps); the Administration for Community Living (ACL); and the Substance Abuse and Mental Health Services Administration (SAMHSA): Director, Equal Employment Opportunity Service Center (EEOSC), Mary E. Switzer Bldg. – Suite 2500, 300 C Street SW, Washington DC 20201, EEOSC.accommodations@hhs.gov.
- For the Administration for Children and Families: OpDiv Senior Officer for Privacy, Administration for Children and Families, 330 C Street SW - Suite 3313A, Washington, DC 20201, ACF\_PIRT@acf.hhs.gov.

- For the Centers for Disease Control and Prevention (CDC): Deputy Director, Office of Equal Employment Opportunity, MS US11-1EEO, Centers for Disease Control and Prevention, 1600 Clifton Rd. NE, Atlanta, GA 30329-4027, RAInquiry@cdc.gov.
- For the Centers for Medicare & Medicaid Services (CMS): Director, Office of Equal Opportunity and Civil Rights, 7500 Security Blvd., Baltimore, MD 21244, reasonableaccommodationprogram@cms.hhs.gov.
- For the Food and Drug Administration (FDA): Privacy Coordinator, Division of Information Governance/Privacy, 5630 Fishers Ln., Rockville, MD 20857, PrivacyOffice@fda.hhs.gov.
- For the Health Resources and Services Administration (HRSA): Accessibility Section Chief, Office of Civil Rights, Diversity and Inclusion (OCRDI), 5600 Fishers Ln., Room 14N176, Rockville, MD 20857, RA-Request@hrsa.gov.
- For the Indian Health Service (IHS): Privacy Officer, Indian Health Service, 5600 Fishers Ln., Mail Stop 09E70, Rockville, MD 20857, heather.mcclane@hhs.gov.
- For the National Institutes of Health (NIH): Branch Director, Access and Equity (A&E) Branch, Division of Guidance, Education and Marketing (GEM), Bldg. 2, Rm. 3W07, 2 Center Dr., Bethesda, MD 20892, edi.ra@nih.gov.

#### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

29 U.S.C. 791 and 793(d); 42 U.S.C. 2000e-16, 12101 through 12117, and 12201 through 12213; and Executive Order (E.O.) 13164, Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, 65 FR 46565 (July 26, 2000).

#### **PURPOSE(S) OF THE SYSTEM:**

The purpose of this system of records is to document, track, and support the adjudication of two types of verbal and written requests for accommodation, i.e., disability-based requests and religious-based requests; and to provide data for accommodation program reporting and

evaluation purposes. The ultimate purpose of the records is to allow HHS to provide legally required accommodations to individuals with disabilities and sincerely held religious beliefs.

The records are used by relevant HHS supervisors, reasonable accommodation coordinators, equal employment opportunity (EEO) specialists, employee relations specialists, attorneys, medical review personnel, contracting officers and their representatives, and other personnel involved in processing or adjudicating accommodation requests.

### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The categories of individuals are HHS civilian employees and HHS contractors and visitors who make accommodation requests, verbally or in writing, to HHS.

For purposes of this system of records, visitors are individuals who seek to access an HHS facility or to participate in an HHS-sponsored federally funded meeting, event, medical trial, or other program but are neither HHS employees nor HHS contractors. Visitors may include employees and contractors of other federal agencies, guest speakers participating in an HHS-hosted meeting or training event, members of the public attending an HHS-hosted meeting, participants in medical trials, interns, detailees, student volunteers, visiting scientists, intramural research trainees, fellows, or other non-employees performing work for HHS.

### **CATEGORIES OF RECORDS IN THE SYSTEM:**

The system of records includes all records that may support a determination regarding an accommodation request.

The categories of records include:

- Documentation of the original request, whether made verbally or in writing.
- Records submitted by the individual in support of a request for reasonable accommodation based on disability, such as records describing the individual's medical conditions and the accommodation requested.



- Records submitted by the individual in support of a request for religious accommodation, such as records describing the individual's religious beliefs, practices, or observances, explaining the conflict(s) experienced by the individual with a particular HHS practice, policy, custom, or environment, and describing the accommodation requested.
- Correspondence from professionals such as physicians who know the individual and provide information supporting the individual's request for the accommodation.
- Notes memorializing verbal conversations.
- Records of consultations with third parties within or outside the agency who provide technical assistance to the agency.
- Communications about the substance of the request, the processing of the request, and burdens and other issues identified.
- Records of the agency's analysis, adjudication, and determination of the request.
- Records associated with requests for reconsideration or appeal, if appropriate.
- Notices provided to the individual about the agency's determination and agency procedures for reconsideration or other appeal processes, if applicable.
- Records documenting any accommodation provided.

#### **RECORD SOURCE CATEGORIES:**

The records are provided by the individual making the request, by HHS personnel involved in processing or adjudicating the request (including supervisors, reasonable accommodation coordinators, equal employment opportunity (EEO) specialists, employee relation specialists, attorneys, medical review personnel, and contracting officers and their representatives), and by others furnishing records pertinent to the request (such as, the individual's medical professionals, or technical experts).

#### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to other disclosures authorized directly in the Privacy Act at 5 U.S.C. 552a(b)((1) and (2) and (b)(4) through (11), HHS may disclose a record about an individual from this system of records to parties outside HHS as described in the following routine uses, without the individual's prior written consent:

1. HHS may disclose records about individuals' accommodation requests to a contractor or agent engaged by HHS to assist in administering aspects of accommodation request handling, including information technology (IT) system support contractors, when it is necessary for the contractor or agent to have access to the records to provide that assistance.
2. HHS may disclose relevant information about an HHS employee's accommodation request to a labor organization recognized under E.O. 11491 Labor Management Relations in the Federal Service or 5 U.S.C. Chapter 71 upon receipt of a formal request from the labor organization and in accord with the conditions of 5 U.S.C. 7114 when a contract between the labor organization and an HHS component provides that the component will disclose personal information relevant and necessary to the labor organization's mission or duties of exclusive representation concerning personnel policies and practices and matters affecting working conditions.
3. HHS may disclose to an HHS contractor's employer the existence, status, and determination of the contractor's accommodation request, but not records that reveal whether the request is based on a medical condition or a religious conflict.
4. HHS may disclose relevant records about a federal employee's accommodation request to an authorized appeal grievance examiner, formal complaint examiner, administrative judge, equal employment opportunity investigator, arbitrator, or other authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee; however, most such disclosures will be authorized by the individual's prior, written consent.

5. HHS may disclose relevant accommodation records about a federal employee to any of the following agencies or entities when needed by the agency or entity to discharge its below-described role:
  - a. To the Office of Personnel Management (OPM) to evaluate the individual's application for disability retirement.
  - b. To the Equal Employment Opportunity Commission (EEOC) to investigate, adjudicate, and litigate the individual's complaint of employment discrimination or to ensure compliance by HHS under 29 C.F.R. Part 1630.14(b)(1)(iii)).
  - c. To the Merit Systems Protection Board (MSPB) to adjudicate and litigate the individual's appeal of a personnel action.
  - d. To the Office of Special Counsel (OSC) in order to investigate claims of prohibited personnel practices against HHS.
  - e. To the Federal Labor Relations Authority (FLRA) to evaluate and arbitrate a claim of unfair labor practices against HHS.
  - f. To the Federal Mediation and Conciliation Service (FMCS) or other alternative dispute resolution (ADR) or arbitration service to conduct a confidential mediation between HHS management and employees or between the individual and HHS.
6. A record may be disclosed to the U.S. Department of Justice (DOJ) or to a court or other adjudicative body in litigation or administrative proceedings when (1) HHS or any component thereof; or (2) any employee of HHS acting in the employee's official capacity; or (3) any employee of HHS acting in the employee's individual capacity where the DOJ or HHS has agreed to represent the employee; or (4) the United States Government, is a party to the proceedings or has an interest in the proceedings and, by careful review, HHS determines that the record is both relevant and necessary to DOJ's representation or to the proceedings.

7. Records may be disclosed to a congressional office in response to an inquiry from the congressional office made at the written request of the subject individual.
8. Records may be disclosed to representatives of the National Archives and Records Administration (NARA) in records management inspections conducted pursuant to 44 U.S.C. 2904 and 2906.
9. Records may be disclosed to appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records, (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (including its information systems, programs, and operations), the federal government, or national security, and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS' efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.
10. Records may be disclosed to another federal agency or federal entity, when HHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the federal government, or national security, resulting from a suspected or confirmed breach.

Any other disclosures require the individual's prior written consent.

Note also that if an individual's accommodation records become part of a related proceeding covered by a different System of Records Notice (SORN), the records will be subject to disclosures under routine uses published in that SORN (see, for example: 09-90-0009

Discrimination Complaint Records; 09-90-0069 Unfair Labor Practice Records; EEOC/GOVT-1

Equal Employment Opportunity in the Federal Government Complaint and Appeals Records; MSPB/GOVT-1 Appeals and Case Records; and 09-90-0062 Administrative Claims).

#### **POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

All records (including those received in paper form) are stored in electronic media to comply with OMB Memorandum M-19-21, Transition to Electronic Records (June 28, 2019).

#### **POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

The records are retrieved by the subject individual's name, assigned case number (if any), or HHS identification number (if applicable).

#### **POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Accommodation records about federal employees are retained and disposed of in accordance with the following disposition authorities:

- General Records Schedule (GRS) 2.2 Employee Management Records, Item 080, supervisor's personnel files (these include employee medical documents until replaced by the agency's accommodation decision, and exclude records that become part of a grievance file, an appeal or discrimination complaint file, a performance-based reduction-in-grade or removal action, or an adverse action, which are governed by GRS 2.3 Employee Relations Records): Review annually and destroy superseded documents. Destroy remaining documents one year after employee separation or transfer.
- GRS 2.3 Employee Relations Records, Item 020, reasonable accommodation case files: Destroy three years after employee separation from the agency or after all appeals are concluded, whichever is later, but longer retention is authorized if required for business use.

Accommodation records about federal contractors are retained and disposed of in accordance with the following disposition authority:

- GRS 2.3 Employee Relations Records, Item 120, records documenting contractor compliance with EEO regulations: Destroy when 7 years old, but longer retention is authorized if required for business use.

Accommodation records about HHS visitors who are neither federal employees nor federal contractors are currently unscheduled and will be retained indefinitely until authorized for disposition under a schedule approved by the National Archives and Records Administration.

### **ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Safeguards conform to the HHS Information Security and Privacy Program, <https://www.hhs.gov/ocio/securityprivacy/index.html>, including the HHS Information Security and Privacy Policy (IS2P), which ensures that information is safeguarded in accordance with applicable federal laws, rules, and policies, including: 44 U.S.C. 3541 through 3549 and 3551 through 3558; all pertinent National Institutes of Standards and Technology (NIST) publications; and OMB Circular A-130, Managing Information as a Strategic Resource, 81 FR 49689 (July 28, 2016).

Records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include protecting the facilities where records are received and electronically stored with security guards, identification badges, and cameras; securing any hard copies in locked file cabinets, file rooms or offices during off-duty hours; requiring contractors to maintain appropriate safeguards and to comply with the Privacy Act with respect to the records; limiting authorized users' access to electronic records based on role and either two-factor authentication or password protection; requiring passwords to be complex and to be changed frequently; using a secured operating system protected by encryption, firewalls, and intrusion detection systems; maintaining an activity log of users' access; requiring

encryption for any records stored or accessed on removable media; training personnel in Privacy Act and information security requirements; and reviewing security controls on an ongoing basis.

To control and limit access, use, and disclosure of the records appropriately, HHS may maintain disability-based accommodation records in or with other confidential medical files about the same individual, or otherwise separately from other types of records about the same individual, to the extent possible. Likewise, to the extent possible, HHS maintains religious accommodation records about an individual separately from other types of records about the individual.

#### **RECORD ACCESS PROCEDURES:**

Individuals may request access to records about them in this system of records by submitting a written access request to the System Manager identified in the “System Manager” section of this SORN. The request must contain the requester’s full name, home or work address, date of birth, signature, and assigned case identification number (if any) and must identify the employing or hiring component pertinent to the request. To verify the requester’s identity, the signature must be notarized or the request must include the requester’s written certification that the requester is the individual who the requester claims to be and that the requester understands that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense subject to a fine of up to \$5,000. To access the records in person, the requester should make an appointment, and may be accompanied by a person of the requester’s choosing if the requester provides written authorization for agency personnel to discuss the records in that person’s presense. An individual may also request an accounting of disclosures that have been made of the records, if any.

#### **CONTESTING RECORD PROCEDURES:**

Individuals may seek to amend records about them in this system of records by submitting an amendment request to the System Manager identified in the “System Manager” section of this SORN, containing the same information required for an access request. The request must include

verification of the requester's identity in the same manner required for an access request; must reasonably identify the record and specify the information contested, the corrective action sought, and the reasons for requesting the correction; and should include supporting information to show how the record is not accurate, complete, timely, or relevant.

**NOTIFICATION PROCEDURES:**

Individuals who wish to know if this system of records contains records about them should submit a notification request to the System Manager identified in the "System Manager" section of this SORN. The request must contain the same information required for an access request and must include verification of the requester's identity in the same manner required for an access request.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

None.

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